

MEMORANDUM #30, 2013

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Enforcement of Post-Retirement Limits on Retirees of a Public Retirement System who Take Employment with any Public Entity in Massachusetts. (*Earned Income Worksheet and Q & A Attached*)

DATE: November 1, 2013

Post-Retirement limitations are governed by G.L. c. 32 § 91(b), which states that public retirees who return to public employment with any governmental entity in Massachusetts cannot exceed service in excess of 960 hours in a calendar year, nor can any compensation in a calendar year from a city, town, the Commonwealth, or any of its subdivisions, when added to his/her retirement allowance exceed the salary currently being paid for the position from which he/she retired. If a retiree has been retired for more than 12 months such retiree may earn an additional \$15,000 in each calendar year following such 12 month period.

Accordingly, for the upcoming 2014 calendar year, any retiree retired *on or before* January 1, 2013 will be able to add the additional \$15,000. However, more recent retirees who retired *after* January 1, 2013 do not get this additional \$15,000 as earnings in 2014 but will each calendar year thereafter. In either case, NO such retiree is allowed to work for a public employer for more than 960 hours during any one calendar year. **Please be advised that under Massachusetts public retirement pension law, G.L. c. 32 § 91(c), the enforcement of such post retirement limits are placed upon the employer and respective treasurer authorized to pay local employees;**

(c) Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom, and if the number of hours exceeds nine hundred and sixty, in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable under paragraph (b), he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of

said allowable amount. The amount of any excess not so returned may be recovered in an action of contract by the appropriate treasurer or other person responsible for the payment of the compensation of any such person.

In addition to the statutory directive to the employer, collection of repayment for such overearnings is also governed by case law, Flanagan v. Contributory Retirement Appeal Bd., 51 Mass.App.Ct. 862, 750 N.E.2d 489 (2001). This decision authorizes the respective retirement board to act in its fiduciary capacity and collect if the employer does not collect.

In addition to providing you with this post-retirement information, PERAC would like to make you aware that this information is also being distributed to all Chief Executive Officers and Treasurers across the Commonwealth (See Enclosed Memo). It is necessary that you work with them to help identify any current employees or new hires that are currently receiving a pension allowance and provide them with the pension information, such as, current pension allowance amount, date of retirement and other salary information necessary to accurately calculate the post-retirement earnings limitations.

In an effort to assist you in the oversight of post-retirement earnings for employees who are retired from a public retirement system in the Commonwealth, attached please find a "Post-Retirement Earnings Worksheet" and "Commonly Asked Post Retirement Earnings Q &A" document. (Both attachments accompany this Memo and are posted on PERAC's website.)

The updated worksheet has been adjusted in order for individuals who retired **on or before January 1, 2013**, to receive the additional \$15,000 in earning capacity for public employment in calendar year 2014. This adjustment will also allow individuals retiring at any time to utilize the worksheet to calculate their earnings capacity for calendar year 2014. You may access this worksheet on our website, www.mass.gov/perac or download the worksheet and instructions accompanying this memo.

Thank you very much for your cooperation.

Attachments